

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
EDWARD L. BERNER,
Debtor.

Case No. 87-56442

**APPLICATION FOR ORDER VOIDING
ABSTRACT OF JUDGMENT FILED IN
VIOLATION OF STAY**

FACTS

The Plaintiffs Stewart and Lynette Goldstein procured a judgment in February 1989 against the Debtor excepting his debt to them from discharge. Without first pursuing relief from the automatic stay, the Plaintiffs recorded an abstract of judgment against the Debtor's residence, which is his homestead. The Debtor is currently attempting to refinance his residence. By way of this Application, the Debtor now seeks to set aside and declare void this abstract of judgment on the basis that it was recorded in violation of the automatic stay.

If the abstract of judgment is voided, both parties would have the opportunity to diligently pursue their respective interests. That is, the Debtor may proceed with the refinance, and the Plaintiffs may proceed with filing another abstract of judgment. Under these circumstances, if the Debtor is able to refinance the residence under more favorable terms, it may be appropriate for the parties to discuss a settlement of this matter. Would the parties like to pass this matter and we'll come back to you?

DISCUSSION

Although the Debtor's argument that the enforcement of a judgment of nondischargeability of a debt absent relief from the stay violates the automatic stay has merit, see In re Watson, 78 Bankr. 267, 270 (Bankr. C.D. Cal. 1987)(enforcement of nondischargeability judgment violated automatic stay where stay had not terminated and no relief from stay had been obtained), the automatic stay does not preclude the execution of a judgment, which has been held by the Bankruptcy Court to be nondischargeable, upon property of the Debtor that is not property of the estate. In re Watson, 78 Bankr. 232, 235 (Bankr. 9th Cir. 1987); In re Gustafson, 111 Bankr. 282, 285 (Bankr. 9th Cir. 1990), rev'd on other grounds, 934 F.2d 216 (9th Cir. 1991)(automatic stay does not apply to prevent acts to collect claims that Bankruptcy Court has determined to be nondischargeable).

In this case, the property against which the Plaintiffs have filed the abstract of judgment is the Debtor's homestead, which is exempt from property of the estate under Section 522(b) of the Bankruptcy Code. Because the property in question is not property of the estate, the recording of the abstract of judgment was not in violation of the stay; therefore, the Debtor's Application is denied.